In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1459

UNITED STATES OF AMERICA, PETITIONER

v.

LITTLE LAKE MISERE LAND COMPANY, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF

1. Respondents' brief in opposition suggests that the constitutional questions presented in the government's petition cannot be asserted in this Court because they were not "raised as an affirmative claim in the * * * District Court" (Br. in Opp. p. 9). On the contrary, these questions were presented to and decided by both courts below. The district court explicitly stated (Pet. App. A, p. 4a) that the government was contending that "if Act 315 of 1940 is interpreted as extending the [respondents'] * * * servitude in the minerals, it is unconstitutional" on the grounds set forth at pp. 11-18 of the petition, and rejected that contention, as well as the government's other arguments, on the authority of the court of ap-

peals' *Leiter Minerals* decision. The court of appeals also noted and rejected the government's contentions regarding the constitutionality of applying Act 315 to the mineral reservations involved here (Pet. App. C, pp. 17a–18a).

2. Our contention that federal law rather than state law governs the government's property rights in the lands in question would not, as respondents claim (Br. in Opp. p. 4), require the "modification and emasculation" of this Court's decision in *Leiter Minerals, Inc.*, v. *United States*, 352 U.S. 220. Although in that case the Court held that the Louisiana state courts should be permitted to construe Act 315 before the federal courts considered its constitutionality as applied to property belonging to the United States, the Court admonished that "[i]t need hardly be added that the state courts in such a proceeding can decide definitively only questions of state law that are not subject to overriding federal law" (352 U.S. at 229–230). As set forth fully in the petition (pp. 12–14, 18–20), we believe that the government's interest in these lands is subject to overriding federal law, and that for that reason the court of appeals erred in its view that state law governed in this situation.

This case therefore is fundamentally different from *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63, on which respondents rely (Br. in Opp. p. 7). That case involved a controversy between two private parties concerning whether an oil and gas lease was assignable. This Court concluded that state law controlled because, unlike the instant case, there was "no

significant threat to any identifiable federal policy or interest" (384 U.S. at 68).

For the foregoing reasons and for the reasons set forth in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY—1972.

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